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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the matter of	)	
	)	
Implementation of Section 309 (j)	)	
Of the Communications Act	)	MM Docket No. 97-234
-- Competitive Bidding for Commercial	)	
Broadcast and Instructional Television	)	
Fixed Service Licenses	)	
	)	
Reexamination of the Policy	)	GC Docket No. 92-52
Statement on Comparative	)	
Broadcast Hearings	)	
	)	
Proposals to Reform the Commission's	)	GEN Docket No. 90-264
Comparative Hearing Processes to	)	
Expedite the Resolution of Cases	)	

**COMMENTS OF JEREMY D. LANSMAN<sup>1</sup>**

To: The Commission

**End of an Era of Freedom**

FCC-97.237 signals the sad end of an era, and the start of what portends to be the start of a new reign of a few nearly omnipotent national broadcasters. I lived most of my life in an era in which any American could build and own a broadcast station if they had stamina, guts, indefatigable patience dealing with FCC bureaucracy, and a willingness to seek a less popular channel in a less crowded part of the country. Having been infected by the radio bug at an early age, I proceeded to build stations, and as a consultant I have helped others bring their own dreams and ideas to reality.

Congress has mandated competitive bidding for new channels, and FCC 97.237 is required to set forth the rules for such bidding. I'm a "little guy". Little guys don't win competitive bids. If the goal of an auction is extraction of the largest possible contribution to the Federal Treasury, us independents, the "little

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<sup>1</sup> Jeremy D. Lansman has majority interest in KYES-(TV), Anchorage, AK, and is party to a pending mutually exclusive application that may be subject to auction on channel 13, Fairbanks, AK (BPCT960917KG)

guys” can’t match the deep pockets possessed by big corporations. Maybe that is OK in oil tract or forest tract leasing, but broadcasting involves our First Amendment rights.

The Commission has, in the past, given bidding credits and discounts to “designated Entities”. A few percent discount here, or longer terms for payment there won’t open the game to us “little guys”. The Big Deep Pocket guys can out bid us with ease. To get us back in the game, discounts must be deep.

## **Comparative Shills and Nominees**

If you liked the notion that TV and Radio stations should be owned and operated by diverse persons more or less representing the spectrum of American thought, politics, or background, owners who recognize they are trustees, owners who know they are expected to contribute back to their communities, you have been very frustrated. What could be worse than comparative hearings? Those of us who participated in the Comparative Circus know that nominees, shills, Local Marketing Agreements, instant transfers of control, and expanded ownership limits made a mockery of comparative hearings. How could auctions be worse?

Whatever auction process is determined by this proceeding is likely to be with us a long, long time. Competitive bidding implies the government has determined “public interest standards” in broadcasting equates to maximum revenue to the Federal Treasury. Bidding top dollar tilts the economic playing field in favor of public interest scofflaws, and speculators, while at the same time giving them the best excuse for avoiding trusteeship responsibilities<sup>2</sup>. You can bet we will hear lines like, “I have to pay the loans I used to pay the government, I can’t refuse highly rated violent kids shows, or I’ll go broke.”

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<sup>2</sup> Is it not just a little bit curious that PL105-33 Section 3002(a)(2)(A)(i) says competitive bidding authority shall not apply to radio services “...that are used to protect the safety of life, health or property ...”? I wonder if this means broadcasters can turn off their Emergency Action Notification equipment?

## **The Highest Winning Bid is the Best Excuse**

Indeed, how do you think winning bidders can best make a profit after writing that big check to the government?<sup>3</sup> By willingly playing educational kids shows<sup>4</sup>, providing discounted or free political advertising time, or refusing hard liquor advertising<sup>5</sup>? I hardly think so. The broadcast industry is undergoing rapid consolidation. As new, larger companies emerge, will they lobby for release from public interest obligations? Will Congress be able to resist the enhanced political leverage of these mega-companies?

## **Auction Shills and Nominees**

As the NPRM speaks about selling to the highest bidder on the one hand, on the other hand, non monetary values seem to get some attention<sup>6</sup>. After panning the old hearing criteria (Paragraph 19) including such factors as local ownership and civic participation, the NPRM asks if there should be minority, female and media diversity, and small business (Designated Entities) credits (See paragraph 86, 88, 89 92 etc.). Let us assume that auction rules give very large bidding credits for “designated entities”, making the credits effective. Would the “Unjust Enrichment” rules as proposed protect against shills and nominees? I think not. Unless “Designated Entities” such as a woman owned businesses, winning via such rules are prohibited from assigning their broadcast rights and responsibilities via LMA, or JSA<sup>7</sup> agreements, the incentive to use shills and nominees will be irresistible. Furthermore, given deep discounts

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<sup>3</sup> A safe assumption given the language of Paragraph 52 of the NPRM, where it seems the Commission seeks to award the channel to the party that “... values the spectrum the most...”

<sup>4</sup> And low rated they are. Violent and shallow kids shows get consistently higher Nielsen ratings than the new crop of educational kids shows.

<sup>5</sup> KYES did exactly that when Segrams called. You bet if we paid top dollar for our channel we would have not hesitated to tell them YES, we will run the ads.

<sup>6</sup> Paragraph 83 of the NPRM says “...a competitive bidding system..., must ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services and for this purpose it shall consider the use of tax certificates, bidding credits and other procedures. This makes clear that top dollar bid is not the sole purpose intended by Congress. The term “other procedures” might open the door to suggestions I make below.

<sup>7</sup> Joint Sales Agreements (JSA) between broadcast stations are more pernicious. They are used by the larger broadcaster to gain effective control of a smaller broadcast property, where overt ownership or LMA

to favored bidders, is the five year<sup>8</sup> “unjust enrichment” period as proposed long enough? Shouldn’t the period depend on the depth of the discount?

Assume that Big Company A doesn’t qualify for a discount so they contract with small, minority owned company B to bid. The contract gives Big Company A JSA or LMA rights to any resulting station. If minority owned and media diversity credits are to be effective, they must be deep. However, the deeper the discounts, the greater the incentive to scam and sham. Certainly, prohibition of LMA and JSA contracts should be considered.

### **Non-monetary Bids?**

Some broadcasters actually want to contribute something back to the community. A few of us actually like the idea of forgoing income by giving away some time for political debate or access, educational kids shows, or refusing to air beer or liquor commercials. Those of us with a degree of remaining idealism need to be rewarded, or we will become extinct. Such a reward might be a “non-monetary” multiplier for pledges made at auction<sup>9</sup>. Multipliers might be awarded for old comparative hearing factors, such as media and minority diversity, or new factors such as pledges of political time to candidates, or educational kids shows. The Commission could establish guidelines for such credits.

Non-monetary credits might be numbers such as 1.2, 1.5 or 2. For example, suppose the bidder has no interest in a medium of mass communication in the proposed coverage area, and the credit multiplier for that is 1.2. Lets say the bidder pledges that 5% of air time will be spent broadcasting educational shows for kids and interviews with all candidates for Federal, State and Local elective offices, which the

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arrangements would be illegal. For example, Pioneer Broadcasting has JSA control of KAXX-(AM) and KQEZ (FM) here in the Anchorage in spite of such control being over the owner ship limits.

<sup>8</sup> Paragraph 95 of the NPRM says,” Specifically, we propose to require that, for a period of five years following Program Test Authority, broadcast licensees granted a new license through any designated entity or diversification bidding credits or other special provision must certify annually their continuing eligibility for such credit or provision, under the rules in effect at the time the license was awarded, and report within 30 days any change affecting such eligibility.

<sup>9</sup> This proceeding only concerns a few channels in contest. However, the ideas presented might influence future debate regarding resolution of the natural tension between commercial broadcasters possible idealism and the bottom line.

Commission has valued as a 1.5 multiplier. Last, if the bidder is a minority or woman owned small business lets say they receive a times 2 multiplier. Thus, in the hypothetical example above, we get  $1.2 + 1.5 + 2 = 4.7$ .

The pledges, if kept, cost the bidder a degree of future profitability. In this scheme the public is compensated for the loss of money paid into the treasury by what we hope would become over the air excellence. However, the pledges would have no value to the public if not kept, or if it is not kept for very long, or if it is subject to cancellation in the event the station is sold. Therefore, I propose the pledge should attach to the license. If the license is sold, the buyer assumes all rights and responsibilities of the former licensee, unless otherwise agreed to by the licensing authority.

Obviously a pledge has more value to the public if it is to be effective for a longer period of time. Conversely, if the valid pledge period is short, it has less value. Such pledges would be like contracts between the broadcaster and the public. It might be compared to a tenant contracted to make lease payments both in cash and by improving the leased property. If the lessee occupies the space for 20 years, but has a contract requiring tenant maintenance for three years, the contract has less value than if maintenance is required of the tenant for all 20 years. Likewise, bidding credits should be adjusted depending on the period of time to which the bidder assumes such obligations that earn a bidding credit.

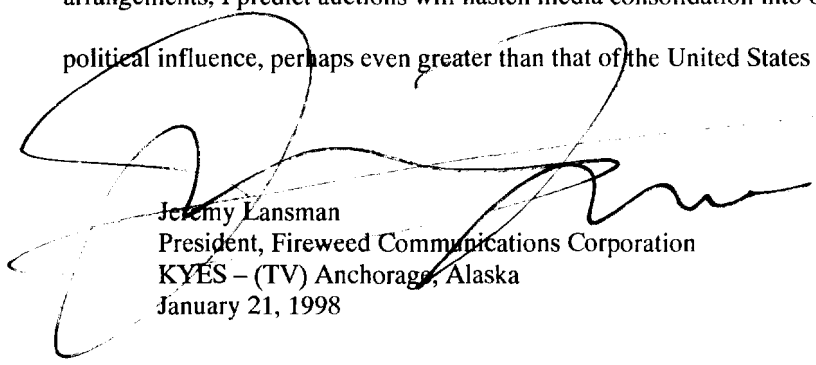
I propose the credit be multiplied by the number of years greater than **three** (3) over which the bidder states the pledges are to be held valid. In the above example we said multipliers are  $1.2 + 1.5 + 2 = 4.7$ . Assuming the pledge is for 15 years, then the multiplier resulting would be 4.7 times 12 or 56.4. This particular bidder might bid \$10,000. We multiply \$10,000 times 56.4 or \$525,000. In this example, the bidder's 15 year obligations would equal a cash bid of \$525,000.

Pledges might be reviewed against performance at license renewal. In case pledges have not been kept, the broadcaster-bidder would be assessed the difference between the auction fee they paid, and what

they would have paid if they had not made the pledge. Conversely, if the high bidder makes no pledges, they get no auction discount, and as a result they have reduced public service obligations.

If a winner makes pledges but then is forced to, or desires to sell the station, the new owner might re-affirm the pledges. Alternatively, a licensee might pay the government in order to remove bidding obligations from the broadcasting license, just as a lessee might pay a lessor in order to change the terms of a lease. Each pledge, having an assigned monetary value could be paid back to the government, with a penalty,<sup>10</sup> at any time, should the broadcaster desire to do so.

I believe auction discounts should have, insofar as possible, a direct relationship to the profit a broadcaster forgoes in performing pledges, with due consideration to the social value of such pledges. Without substantial non-monetary bidding credits, and some restraints on consolidation, LMA and JSA arrangements, I predict auctions will hasten media consolidation into oligopolies having overwhelming political influence, perhaps even greater than that of the United States Congress.



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KYES - (TV) Anchorage, Alaska  
January 21, 1998

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<sup>10</sup> Penalty payments are required to prevent an entity from gaining control of a frequency by making phony pledges, in an effort to get control of the channel, yet pay only as much as the highest cash bid offered. That would be unfair to the honest highest bidder. Thus a significant penalty would need to be assessed for removal of pledge obligations in order to keep bidders honest during the auction.